

15 Plaintiffs Jeff Pokorny and Lary Blen ("Plaintiffs") seek
16 leave to file a sur-reply in response to Defendant Quixtar Inc.'s
17 Reply Memorandum in Support of Objections to and Motion to Strike
18 Declarations of Robert Fitzpatrick and Stephen Hayford Submitted
19 by Plaintiffs in Opposition to Defendant's Motion to Dismiss or
20 Stay ("Reply"). See Mot. for Leave, Docket No. 83.

21 The Court FINDS that the following statements in the Reply
22 constitute material not raised in Defendant's Motion to Strike:

23 1. "the entire JAMS panel, including Mr. Hayford himself,
24 is available at the request of any party." Reply at 6
(emphasis in original).

25 2. "Quixtar's arbitration process is modeled in part after
26 the JAMS rules." Id. at 7.

27 3. "Quixtar's confidentiality provision . . . is virtually
identical to mediation programs used by a wide range of
fortune 500 companies." Id. at 6.

1 The Court will consider this material in making its
2 determination; thus, in the interests of justice, Plaintiffs must
3 be granted an opportunity to respond. See In re Pacific Gas and
4 Elec. Co., C-02-1550 VRW, 2002 WL 32071634, *4 (N.D. Cal. Nov. 14,
5 2002). The other statements in the Reply about which Plaintiffs
6 complain were raised by Defendant in its Motion to Strike; thus,
7 Plaintiffs need not be given an additional opportunity to respond.
8 See Mot. for Leave at 1-2.

9 Accordingly, the Court hereby GRANTS Plaintiffs leave to file
10 a sur-reply of not more than four (4) pages addressing only the
11 three statements identified above. The sur-reply must be filed no
12 later than seven (7) days after the date of this order.

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14 IT IS SO ORDERED.

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16 Dated: June 11, 2007.



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18 UNITED STATES DISTRICT JUDGE

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